

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

NOV 30 2005

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

EMMANUEL SENYO AGYEMAN,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 03-72855

Agency No. A29-765-590

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Argued and Submitted October 19, 2005**
San Francisco, California

Before: D.W. NELSON, RAWLINSON, and BEA, Circuit Judges.

1. The Immigration Judge (IJ) did not deny petitioner Emmanuel Senyo Agyeman due process upon remand. The death of Agyeman's wife and his subsequent failure to file a timely widower petition under 8 C.F.R. §

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

204.2(b)(1)(ii) constitute “good and sufficient cause” supporting the agency’s revocation of the visa petition under 8 U.S.C. § 1155. *See Tongatapu Woodcraft Hawaii, Ltd. v. Felman*, 736 F.2d 1305, 1309 (9th Cir. 1984). Agyeman thus became ineligible for relief before remand proceedings commenced, *see* 8 U.S.C. § 1255, such that the agency had no obligation to reach the issue of whether Agyeman’s marriage was bona fide. *See Simeonov v. Ashcroft*, 371 F.3d 532, 538 (9th Cir. 2004) (“As a general rule courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach.”) (citation omitted). Accordingly, the IJ acted within the dictates of this court’s remand instructions.

2. The IJ did not err by declining Agyeman’s request for equitable tolling of the limitations period. The record does not reflect that Agyeman exercised the diligence required to merit equitable tolling. *See Socop-Gonzalez v. INS*, 272 F.3d 1176, 1193 (9th Cir. 2001) (en banc) (noting the due diligence requirement).

3. The IJ did not err in declining to apply equitable estoppel under the facts of this case, as Agyeman did not demonstrate that the government engaged in

“affirmative misconduct going beyond mere negligence.” *Sulit v. Schiltgen*, 213 F.3d 449, 454 (9th Cir. 2000).

PETITION DENIED.